

§ 10.845

19 CFR Ch. I (4–1–16 Edition)

(A) Any foreign materials used in the production of the apparel articles in Haiti; and

(B) Any foreign materials used in the production of the materials produced in Haiti or one or more eligible countries described in paragraph (c) of this section.

(e) *Direct costs of processing operations*—(1) *Items included*. As used in paragraphs (a) and (b) of this section, the words “direct costs of processing operations” mean those costs either directly incurred in, or which can be reasonably allocated to, the growth, production, manufacture, or assembly of the specific articles under consideration. Such costs include, but are not limited to the following, to the extent that they are includable in the appraised value of the imported articles:

(i) All actual labor costs involved in the growth, production, manufacture, or assembly of the specific articles, including fringe benefits, on-the-job training, and the cost of engineering, supervisory, quality control, and similar personnel;

(ii) Dies, molds, tooling, and depreciation on machinery and equipment which are allocable to the specific articles;

(iii) Research, development, design, engineering, and blueprint costs insofar as they are allocable to the specific articles; and

(iv) Costs of inspecting and testing the specific articles.

(2) *Items not included*. The words “direct costs of processing operations” do not include items that are not directly attributable to the articles under consideration or are not costs of manufacturing the product. These include, but are not limited to:

(i) Profit; and

(ii) General expenses of doing business that either are not allocable to the specific articles or are not related to the growth, production, manufacture, or assembly of the articles, such as administrative salaries, casualty and liability insurance, advertising, and salesmen’s salaries, commissions, or expenses.

[CBP Dec. 07–43, 72 FR 34369, June 22, 2007, as amended by CBP Dec. 08–24, 73 FR 56728, Sept. 30, 2008]

§ 10.845 Retroactive application of duty-free treatment for certain apparel articles.

(a) *General*. Notwithstanding 19 U.S.C. 1514 or any other provision of law, if apparel articles, as described in § 10.843(a) of this subpart, of a producer or entity controlling production are ineligible for duty-free treatment in an applicable one-year period because the apparel articles of the producer or entity controlling production did not meet the requirements of § 10.843(a) of this subpart or the applicable value-content requirement set forth in § 10.844(a) of this subpart, and the apparel articles of the producer or entity controlling production satisfy the increased value-content percentage set forth in § 10.844(a)(4)(iii) of this subpart in that same applicable one-year period, the entry of any such articles made during that applicable one-year period will be liquidated or reliquidated free of duty, and CBP will refund any customs duties paid with respect to such entry, with interest accrued from the date of entry, provided that the conditions and requirements set forth in paragraph (b) of this section are met.

(b) *Conditions and requirements*. The conditions and requirements referred to in paragraph (a) of this section are as follows:

(1) The articles in such entry would have received duty-free treatment if they had satisfied the requirements of § 10.843(a) and the applicable value-content requirement set forth in § 10.844(a) of this subpart;

(2) A declaration of compliance with the increased value-content percentage is submitted to CBP within 30 days following the end of the applicable one-year period during which the increased percentage is met (*see* § 10.844(a)(4)(v) of this subpart); and

(3) A request for liquidation or reliquidation with respect to such entry is filed with CBP before the 90th day after CBP determines and notifies the importer that the apparel articles of the producer or entity controlling production satisfy the increased value-content percentage set forth in § 10.844(a)(4)(iii) of this subpart during that applicable one-year period.

Example. A Haitian producer of articles that meet the description in § 10.843(a) of this

subpart begins exporting those articles to the United States during the initial applicable one-year period and elects to use the annual aggregation method for purposes of meeting the applicable value-content requirement. The articles entered during that initial period meet a value-content percentage of 48%, while articles entered during the second applicable one-year period meet a value-content percentage of 62%. The producer's articles may not receive duty-free treatment during the initial applicable one-year period because the requisite 50% value-content requirement was not met. The producer's articles also are ineligible for duty-free treatment during the second applicable one-year period because the 50% value-content requirement was not met in the immediately preceding period (the initial applicable one-year period). However, because the producer's articles entered during the second applicable one-year period satisfy the increased value-content percentage requirement (60%), the importer(s) of these articles may file a request for and receive a refund of the duties paid with respect to the articles entered during that period, assuming compliance with the conditions and requirements set forth in §10.847 of this subpart. In addition, the producer's articles entered during the third applicable one-year period are eligible for duty-free treatment based on compliance with the increased value-content percentage in the second applicable one-year period.

§ 10.846 Imported directly.

(a) *Textile and apparel articles.* To be eligible for duty-free treatment under this subpart, textile and apparel articles described in paragraphs (a) through (j) of §10.843 of this subpart must be imported directly from Haiti or the Dominican Republic into the customs territory of the United States. For purposes of this requirement, the words "imported directly from Haiti or the Dominican Republic" mean:

(1) Direct shipment from Haiti or the Dominican Republic to the United States without passing through the territory of any intermediate country;

(2) If shipment is from Haiti or the Dominican Republic to the United States through the territory of an intermediate country, the articles in the shipment do not enter into the commerce of the intermediate country and the invoices, bills of lading, and other shipping documents show the United States as the final destination; or

(3) If shipment is through an intermediate country and the invoices and

other documents do not show the United States as the final destination, the articles in the shipment are imported directly only if they:

(i) Remained under the control of the customs authority in the intermediate country;

(ii) Did not enter into the commerce of the intermediate country except for the purpose of a sale other than at retail; and

(iii) Have not been subjected to operations other than loading and unloading, and other activities necessary to preserve the articles in good condition.

(b) *Wiring sets.* To be eligible for duty-free treatment under this subpart, articles described in paragraph (k) of §10.843 of this subpart must be imported directly from Haiti into the customs territory of the United States. For purposes of this requirement, the words "imported directly from Haiti" mean:

(1) Direct shipment from Haiti to the United States without passing through the territory of any intermediate country;

(2) If shipment is from Haiti to the United States through the territory of an intermediate country, the articles in the shipment do not enter into the commerce of the intermediate country and the invoices, bills of lading, and other shipping documents show the United States as the final destination; or

(3) If shipment is through an intermediate country and the invoices and other documents do not show the United States as the final destination, the articles in the shipment are imported directly only if they:

(i) Remained under the control of the customs authority in the intermediate country;

(ii) Did not enter into the commerce of the intermediate country except for the purpose of a sale other than at retail; and

(iii) Have not been subjected to operations other than loading and unloading, and other activities necessary to preserve the articles in good condition.

(c) *Documentary evidence.* An importer making a claim for duty-free treatment under §10.847 of this subpart may be required to demonstrate, to CBP's satisfaction, that the articles